

#### § 1244.5

(4) All subject railroads on the computerized system of reporting shall furnish the Board the control counts and tape specification information as required by the Statement No. 81-1.

(5) Certification by a responsible officer of the subject railroad as to the completeness and accuracy of sample shall be made once a year in accordance with the instructions on the Transmittal Forms OPAD-1 or OPAD-2.

[46 FR 26784, May 15, 1981, as amended at 46 FR 45141, Sept. 10, 1981. Redesignated at 65 FR 37711, June 16, 2000]

#### § 1244.5 Date of filing.

(a) The reporting period for which subject railroads submit waybill sample information shall be the audit (accounting) month except as specified below:

(1) Subject railroads using the computerized system may submit waybill sample information quarterly as specified in Statement 81-1.

(2) Subject railroad using the manual system may submit waybill sample information quarterly if it submits fewer than 1,000 waybills per year.

(b) Waybill sample information shall be forwarded no later than 60 days from the end of the reporting period to the Board.

(c) When the submitted waybill sample information is returned to the submitting railroad for correction, that railroad shall resubmit corrected data to the Board promptly but no later than 60 days after its receipt.

(d) *Transmittal Forms.* (1) Subject railroads using the manual system of reporting shall complete the Transmittal Form OPAD-2, to accompany each waybill sample submission.

(2) Subject railroads using the computerized system of reporting shall complete the Transmittal Form OPAD-1, to accompany each waybill tape submission.

[46 FR 26784, May 15, 1981. Redesignated at 65 FR 37711, June 16, 2000]

#### § 1244.6 Retention of files.

(a) Subject railroads which submit waybill sample data by the computerized system instead of the manual system shall retain the underlying hard

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copy waybills or facsimilies capable of producing legible copies, which shall be complete including inbound references for transit waybills, for a minimum period of four years.

(b) This file of retained waybills shall be maintained in such a manner that the railroads on the computerized system may readily retrieve waybill copies using the waybill identifier code as shown on the submitted computerized waybill record.

[46 FR 26784, May 15, 1981. Redesignated at 65 FR 37711, June 16, 2000]

#### § 1244.7 Special studies.

(a) Although routine submission of hard copy waybills is eliminated when a railroad reports under the computerized system, the Board may order that railroad to submit hard copies of the underlying waybills for special studies.

(b) The Board may order the subject railroads to supply additional data for submitted waybill copies or records for special studies.

[46 FR 26784, May 15, 1981. Redesignated at 65 FR 37711, June 16, 2000]

#### § 1244.8 Analysis of waybill data.

Users of the waybill sample when presenting waybill analysis before the Board shall ensure that the appropriate weighting factors are applied to account for the stratified sampling. See Statement 81-1 for guidelines for weighting waybill data and for computing sampling errors.

[46 FR 26784, May 15, 1981. Redesignated at 65 FR 37711, June 16, 2000]

#### § 1244.9 Procedures for the release of waybill data.

(a) *General.* The procedures for the release of waybill data identify five classes of users of the STB Waybill Sample, define the waybill information or data that each class of users may obtain, and set forth the applicable requirements for the data's release. They also formalize notice and protest procedures for the possible release of waybill data to other users to protect against the inappropriate release of confidential data. The Director of the Office of Transportation Analysis shall be responsible for releasing waybill

data in accordance with these procedures.

(b) *Class of user, available data, and applicable release requirements.* (1) *Railroads.* Each requesting railroad may obtain any waybill record from the STB Waybill Sample covering traffic that originated, terminated, or was bridged by that railroad. The railroad shall not have access to waybill data pertaining to traffic in which it did not participate. Also, it must meet all STB and legal requirements concerning release of shipper information in accordance with 49 U.S.C. 11910(a).

(2) *Federal agencies.* Each requesting Federal agency (including quasi-governmental agencies) may obtain any waybill record from the STB Waybill Sample subject to the following requirements:

(i) The Federal agency shall make the information contained in the STB Waybill Sample available only to its employees or those contractors working on the particular project or study requiring the waybill data.

(ii) The Federal agency will ensure that railroads and shippers are afforded the same privilege and protection against disclosure of the waybill data as the Board provides.

(iii) The Federal agency will not release any data to the public unless the data elements are aggregated to contain at least three shippers and to prevent identification of an individual railroad.

(iv) The Federal agency will refer any requests for waybill data and accompanying documentation to the STB for processing and will so inform the requesting party of such referral to the Board.

(v) The Federal agency must sign an agreement annually with the Board agreeing to these restrictions.

(3) *States.* Each requesting State may obtain any waybill record pertaining to traffic that was originated, terminated, interchanged in, or that passed through its State subject to the same requirements imposed on federal agencies under paragraphs (b)(2)(i) through (v) of this section.

(4) *Transportation practitioners, consulting firms, and law firms—specific proceedings.* Transportation practitioners, consulting firms and law firms may use

data from the STB Waybill Sample in preparing verified statements to be submitted in formal proceedings before the STB and/or State Boards (Board) subject to the following requirements:

(i) The STB Waybill Sample is the only single source of the data or obtaining the data from other sources is burdensome or costly, and the data is relevant to issues pending before the Board.

(ii) The requestor submits to the STB a written waybill request that complies with § 1244.8(e).

(iii) All waybill data must be returned to the STB, and the firm must not keep any copies.

(iv) A transportation practitioner, consulting firm, or law firm must submit any evidence drawn from the STB Waybill Sample to the Board only unless the evidence is aggregated to the level of at least three shippers and will prevent the identification of an individual railroad. Nonaggregated evidence submitted to the Board will be made part of the public record only if the Board finds that it does not reveal competitively sensitive data. However, evidence found to be sensitive may be provided to counsel or other independent representatives for other parties subject to the usual and customary protective order issued by the Board or appropriate authorized official.

(v) For each Board proceeding, a firm must sign a confidentiality agreement with the STB agreeing to the above restrictions before any data will be released. This agreement will permit use of the released data for a period of one year from the date the agreement is signed by the user. If the data is required for an additional period of time because a proceeding is still pending before the Board, the firm must sign a new confidentiality agreement covering the data needed for each additional year the proceeding is opened.

(5) *Public use.* Nonconfidential waybill data may be obtained from the "Public Use Waybill File". Reports produced from the Public Use Waybill File may be used, published, or released. The Public Use Waybill File contains the following nonconfidential items:

(i) Waybill Date (Month, Day, Year).

- (ii) Accounting Period (Month, Year).
- (iii) Number of Carloads.
- (iv) Car Ownership (Rail or Private).
- (v) AAR Car Type.
- (vi) AAR Mechanical Designation.
- (vii) STB Car Type.
- (viii) TOFC/COFC Plan.
- (ix) Number of TOFC/COFC Units.
- (x) TOFC/COFC Unit Ownership.
- (xi) TOFC/COFC Unit Type (Trailer or Container).
- (xii) Hazardous/Bulk Material in Box Car Flag.
- (xiii) Commodity Code—Excluding STCC 49/50 (All 5 digit STCC Codes, except STCC 19).
- (xiv) Billed Weight in Tons.
- (xv) Actual Weight in Tons.
- (xvi) Linehaul Freight Revenue.
- (xvii) Transit Revenue.
- (xviii) Miscellaneous Revenue.
- (xix) Interstate/Intrastate Code.
- (xx) Type of Move (Import/Export/Minibridge).
- (xxi) All Rail/Intermodal Code.
- (xxii) Type Move Via Water.
- (xxiii) Outbound Transit Code.
- (xxiv) Substituted Truck for Rail Service.
- (xxv) Rebill Code.
- (xxvi) Estimate of Miles.
- (xxvii) Stratum Identification.
- (xxviii) Replicate Number.
- (xxix) Population Count/Strata Count (expansion factor).
- (xxx) Theoretical Expansion Factor.
- (xxxi) Number of Interchanges.
- (xxxii) Origin BEA (omitted if STCC and BEA pair reveals competitively sensitive shipper data).
- (xxxiii) Origin STB Rate Territory.
- (xxxiv) States of Interchanges (first through ninth).
- (xxxv) Termination BEA (omitted if STCC and BEA pair reveals competitively sensitive shipper data).
- (xxxvi) Termination STB Rate Territory.
- (xxxvii) Waybill Reporting Period Length.
- (xxxviii) AAR Provided UMBLER Data.
- (xl) Bad Routing Code.
- (xli) Miscellaneous Factored Expanded Data (e.g., carloads).
- (c) *Other Users.* (1) Users other than those described in paragraphs (b)(1) through (b)(5) of this section may file

written requests in accordance with paragraph (e) of this section for permission to use data from the STB Waybill Sample.

(2) All written requests filed by such users are subject to the notice and protest procedures described in paragraph (d) of this section.

(d) *Notice and protest procedures for waybill requests by other users.* Railroads and shippers will be notified and afforded the opportunity to protest waybill requests filed by users other than those described in paragraphs (b)(1) through (b)(5) of this section in accordance with the following procedures:

(1) *Notice of request for confidential waybill data.* Affected railroads and shippers will receive notice by FEDERAL REGISTER Publication. If railroad specific or shipper specific data are requested, those parties will be given written notice of the request.

(2) *Form of notice.* The notice shall identify the parties requesting the data; describe the type of waybill data requested; and state the purpose for which the data is requested. The notice shall include a statement that parties seeking information concerning the filing of objections should refer to Ex Parte No. 385 (Sub-No. 2), 49 CFR 1224.8, or contact the Surface Transportation Board's Office of Transportation Analysis.

(3) *Objections to release.* (i) Objections to release of the confidential waybill data must be filed by the railroad and/or shipper no later than 14 calendar days from publication of the notice in the FEDERAL REGISTER.

(ii) An original and 3 copies of each objection shall be filed with the Director, Office of Transportation Analysis, Surface Transportation Board, Washington, DC 20423.

(iii) The objection shall identify the parties seeking the confidential waybill data, reiterate the purpose for which the data is sought, and state all grounds for objection to full or partial disclosure of the requested data.

(4) *Board determination.* (i) The Director of the Office of Transportation Analysis will consider all objections in determining whether to release the requested waybill data. Each railroad or shipper who filed objections will be sent written notice of the Director's

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decision not less than 14 calendar days prior to the disclosure date.

(ii) The Board reserves the right to deny the release of waybill data although no objections may be filed.

(iii) Appeals must be filed with the Chairman within 10 days of the date of the Director's decision. Responses to appeals must be filed within 10 days thereafter (49 CFR 1011.7(b)(1)). The filing of an appeal will automatically stay the effect of the Director's decision.

(e) *Content of waybill requests.* (1) All requestors under paragraphs (b)(4) and (c) of this section shall include the following information:

(i) A complete and detailed explanation of the purpose for which the requested data are needed.

(ii) A description of the specific waybill data or fields actually required (including pertinent geographic areas).

(iii) A detailed justification as to why the specified waybill data are needed.

(2) An original and 2 copies of the waybill request shall be filed with the Director, Office of Transportation Analysis, Surface Transportation Board, Washington, DC 20423.

(f) Aggregation of confidential shipper data.

(1) Any shipper data obtained from the Waybill Sample shall not be publicly released unless the data are aggregated to include at least three shippers.

(2) To aggregate the waybill data to the level of three shippers, the three-FSAC Rule shall be used. Under this rule, there must be at least three different freight stations as identified by the Freight Station Accounting Code (FSAC) on one railroad or there must be at least two more FSAC's than there are railroads present in the waybill data being aggregated.

(3) The three-FSAC Rule shall apply to every number and calculation publicly released.

(4) The Director of OTA will consider requests to apply an alternative aggregation method provided the requestor establishes that a particular project necessitates an alternative approach and that approach effectively protects the identity of individual shippers.

(g) *Complaint procedures.* (1) Complaints for alleged breaches of confidentiality or misuse of confidential waybill data must include the following:

(i) Identification of all known parties involved in the alleged violation.

(ii) The approximate date(s) of the alleged violations.

(iii) A full and detailed description of the alleged violation.

(iv) A description of any resulting harm to the complainant.

(2) Prior to filing a complaint, a complainant, upon written request, may obtain a copy of the incoming waybill request and the applicable confidentiality agreement. This request must identify the party involved, give the approximate date the data was released, briefly describe the alleged violation, and substantiate the need for this information for purposes of filing a complaint.

(3) An original and three (3) copies of the complaint shall be filed with the Director, Office of Transportation Analysis, Surface Transportation Board, Washington, DC 20423. A copy of the complaint shall also be served on the alleged violator(s).

(4) An answer must be filed within 20 days after service of the complaint.

(5) All parties will be notified in writing of the Director's decision. If the Director determines that a violation has occurred, the offending parties will be denied access to the waybill sample for a period of time commensurate with the nature of the violation.

(6) Appeals to the Director's determination shall be filed in accordance with paragraph (d)(4)(iii) of this section.

(h) *Munitions shipments.* All waybill requests for munition data at the 3-digit Standard Transportation Commodity Code (STCC) level or greater will be forwarded by the STB to the Department of Defense's Military Traffic Management Command (MTMC). The STB will not release this type of information without MTMC's consent.

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